competition in the long distance market. Yet it was only the policies developed and carefully implemented by the Commission that are described above that brought the promise of the divestiture to fruition. We are certainly no closer to actual local competition today than the long distance market was in 1984. Indeed, the ILECs control of local facilities provides a greater barrier to entry, a poses a greater threat to enduring competition, than did AT&T's interstate network. The need for the Commission to adhere to past, proven formulas is concomitantly compelling. That is the significance of the equanimity reflected in the comments the Commission received from the new competitors.[45]

The mere potential for competition cannot provide justification for deregulation of monopoly providers of essential facilities. The Commission's market-based proposal to relax pricing controls on the ILECs in advance of the presence of actual competition is inconsistent with its own pro-competitive policies and record. As ICG proposed in our Comments, the Commission's first order of business should be to ensure the full compliance with the provisions of Sections 251, 252, 254, and 271 of the 1996 Act. Such compliance, along with the completion of the *Expanded Interconnection* proceeding, is a necessity to provide the CLECs with comparable protections afforded the long distance competitors with divestiture and equal access, dialing parity and number portability.

These preconditions facilitate, but do not create or ensure, actual competition. The regulatory relief suggested in the Commission's market-based proposal can be granted only after the Commission is satisfied that actual competition is present in an ILEC's market,

---

45 See Section I.A. above.

and is likely to endure. The Commission should consider the same factors it considered in analyzing the degrees of competition in the equipment and long distance markets that it deregulated: demand elasticity, supply elasticity, the pricing practices of the ILEC and the CLECs in the market, the effect of the ILEC's size and capitalization on the continued growth of competition in the market, and market share data.[46]

II. RATE STRUCTURE REFORM

In ICG's initial Comments, we proposed that the Commission accomplish access reform through a four-year, across-the-board, phase-in of access reductions with the goal of bringing access charges to cost. An analysis of the comments reveals that the ICG's proposal provides a solution which balances the interests of many of the parties.

There are several common themes running through the ILECs' comments on cost recovery. These include: full ILEC capital recovery of their interstate investment is essential; the Commission's failure to assure such recovery would violate the Fifth Amendment prohibition on confiscation of property without just compensation; and the movement of access charges to cost based levels must take place in tandem with separations reform. At the other end of the spectrum, MCI argues that access charges are $11.6 billion too high, should be brought to TELRIC levels immediately, and the Commission's authority to drive interstate access to cost would not violate the Constitution. LCI urges that access charges be reduced to TSLRIC as soon as possible. CompTel agrees, but

[46] We also reiterate the concern expressed in ICG's initial Comments over service-by-service price relief. An ILEC should not be permitted to shift costs to services where it faces no competition. Thus, its relevant market is one in which it faces competition for all exchange and exchange access services.

concedes that moving to TSLRIC immediately would cause rate-shock, and therefore proposes a hierarchy of steps.

ICG appears to be one of several parties in the middle. Several other parties, albeit with various qualifications, tandem proposals, etc., essentially also support moving access charges to cost over the next two to five years. Frontier suggests two years, ICG four, while Bell Atlantic/NYNEX, Sprint, Cable & Wireless, PacTel, and SWB all support a five year transition. Whether done in four or five years, a phased reduction of access charges to costs achieves savings for consumers (the long distance carriers have all issued public statements promising to pass-through the savings), and accommodates the recovery of any legitimate embedded costs that the Commission finds and allows. Further, the Commission could, as suggested by several LECs, through a proceeding to implement separations reform, address any residual embedded costs projected after the four or five years of reductions of access charges through appropriate provisions to allocate the recovery to the proper jurisdiction.

The Comments reveal widely divergent views on the Commission's prescriptive approach to access reform. For example, Bell South argues that its fundamental weakness is its flexibility. Cable & Wireless reads the same document and conclude that the prescriptive approach will add certainty and, ultimately, increase carriers' flexibility. A phased plan does afford a measure of certainty; it provides a stable, predictable framework that allows a sufficient planning horizon while stimulating competition; it cuts prices to consumers, it assures continued cost recovery to the ILECs, and allows an orderly transition to a cost-based access environment.

III. TERMINATING ACCESS CHARGES

ICG supports ALTS' position in its Reply Comments that terminating access is, indeed, subject to market forces, and should not be regulated. As ALTS' comments demonstrate, interexchange carriers and sophisticated business customers can take steps to discourage terminating carriers from charging excessive rates for access. Moreover, should attempts to impose excessive terminating charges become more than anecdotal, a technological solution will undoubtedly be developed. For example, in *Via USA, Ltd.*,[47] the Commission approved automatic call-back services by domestic resellers to substitute U.S. rates for substantially higher foreign rates.

> [W]e note that the market for international call-back services such as those at issue here has been created, at least in part, by the disparity between U.S. and foreign collection rates. The use of the resold services for international call-back activity could place significant downward pressure on foreign collection rates, to the ultimate benefit of U.S. ratepayers and industry."[48]

Any attempt by providers of terminating access to exploit such leverage they may have would lead to similar "technological arbitrage" between higher terminating access and lower originating access.

---

[47] Order, 9 FCC Rcd 2288 (1994), Order on Reconsideration, 10 FCC Rcd 9540 (1995).

[48] *Id.*, 9 FCC Rcd at 2290, ¶ 11.

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt rules consistent with the views herein.

February 14, 1997

Respectfully submitted,

Albert H. Kramer / jdk

Albert H. Kramer
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorney for ICG Telecom Group, Inc.

Cindy Z. Schonhaut
Senior Vice President, Government Affairs
Julia Waysdorf
Senior Director of Government Affairs
ICG TELECOM GROUP, INC.
9605 East Maroon Circle
Englewood, CO 80112
(303) 575-6533

Terry Michael Banks
Of Counsel
1303 Sawbridge Way
Reston, VA 22094
(703) 709-6053